

**MINUTES  
URBAN COUNTY PLANNING COMMISSION  
ZONING ITEMS PUBLIC HEARING**

**July 25, 2013**

- I. **CALL TO ORDER** – The meeting was called to order at 1:29 p.m. in the Council Chamber, 2<sup>nd</sup> Floor LFUCG Government Center, 200 East Main Street, Lexington, Kentucky.

Planning Commission members present: Eunice Beatty; Will Berkley; Carla Blanton; Patrick Brewer; Mike Cravens; David Drake; Karen Mundy; Mike Owens, Chair; Frank Penn; Carolyn Plumlee; and Bill Wilson.

Planning staff members present: Chris King, Director; Bill Sallee; Max Conyers; Barbara Rackers; Jim Marx; Traci Wade; Tom Martin; and Stephanie Cunningham. Other staff members present were: Tracy Jones, Department of Law; Bettie Kerr and Randy Shipp, Division of Historic Preservation; Casey Kaucher, Division of Traffic Engineering; and Hillard Newman, Division of Engineering.

- II. **APPROVAL OF MINUTES** – There were no minutes to be considered at this time.

- III. **POSTPONEMENTS AND WITHDRAWALS** – Requests for postponement and withdrawal will be considered at this time.

1. **PLAN 2013-78F: DISTILLERY DISTRICT WEST (AMD) (9/19/13)\*** - located at 1200 Manchester Street.  
(Council District 2) **(2020 Land Surveying)**

Note: The purpose of this amendment is to subdivide one lot into two lots. The Planning Commission postponed this plan at their July 11, 2013, meeting.

The Subdivision Committee Recommended: **Postponement**. There are concerns with the sanitary sewer service to the property.

Should this plan be approved, the following conditions should be considered:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection area(s).
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Addition of utility and street light easement(s) as required by the utility companies and the Urban County Traffic Engineer.
8. Denote location of cross-section through Manchester Street.
9. Denote "amended" in title block.
10. Denote acreage on lots.
11. Correct date of plan preparation.
12. Clarify right-of-way dedication with a solid line.
13. Provided the Planning Commission grants a waiver to Article 4-7(d)(1) regarding substantial completion of infrastructure.
14. Review by Technical Committee prior to plan certification.

Petitioner Representation: Justin Drury, 2020 Land Surveying, was present representing the petitioner. He stated that the petitioner would like to request a two-week postponement of this item.

Action: A motion was made by Mr. Cravens, seconded by Ms. Mundy, and carried 10-0 (Berkley absent) to postpone PLAN 2013-78F to the August 8, 2013, Planning Commission meeting.

- IV. **ZONING ITEMS** - The Zoning Committee met on Wednesday, July 3, 2013, at 1:30 p.m. in the Division of Planning Office. The meeting was attended by Commission members Carla Blanton, Patrick Brewer, Mike Cravens, and Bill Wilson. The Committee reviewed applications, and made recommendations on zoning items as noted.

A. **ABBREVIATED PUBLIC HEARINGS ON ZONE MAP AMENDMENTS AND RELATED PLANS**

The staff will call for objectors to determine which petitions are eligible for abbreviated hearings.

Abbreviated public hearings will be held on petitions meeting the following criteria:

- The staff has recommended approval of the zone change petition and related plan(s)
- The petitioner concurs with the staff recommendations
- Petitioner waives oral presentation, but may submit written evidence for the record
- There are no objections to the petition

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**B. FULL PUBLIC HEARINGS ON ZONE MAP AMENDMENTS AND RELATED PLANS** – Following abbreviated hearings, the remaining petitions will be considered.

The procedure for these hearings is as follows:

- Staff Reports (30 minute maximum)
- Petitioner's report(s) (30 minute maximum)
- Citizen Comments
  - (a) proponents (10 minute maximum OR 3 minutes each)
  - (b) objectors (30 minute maximum) (3 minutes each)
- Rebuttal & Closing Statements
  - (a) petitioner's comments (5 minute maximum)
  - (b) citizen objectors (5 minute maximum)
  - (c) staff comments (5 minute maximum)
- Hearing closed and Commission votes on zone change petition and related plan(s)

**Note:** Requests for additional time, stating the basis for the request, must be submitted to the staff no later than two days prior to the hearing. The Chair will announce its decision at the outset of the hearing.

**1. BALL HOMES, LLC, ZONING MAP AMENDMENT & HARVEY PROPERTY (E. MAURICE NEAL PROPERTY, W.E. SAVAGE PROPERTY & HAMPTON SPRINGS) ZONING DEVELOPMENT PLAN**

- a. MAR 2013-13: BALL HOMES, LLC – petition for a zone map amendment from an Agricultural Urban (A-U) zone to a Planned Neighborhood Residential (R-3) zone, for 24.88 net (27.71 gross) acres, for property located at 4500 & 4524 Old Schoolhouse Lane.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 11) recommends Medium Density Residential future land use for the subject property. The petitioner proposes to construct a total of 241 residential units on the subject property and the rear portion of the adjoining church property (originally planned as Hampton Springs). The corollary development plan depicts 45 single-family residences and 196 multi-family dwelling units, for an overall density of 7.74 dwelling units per net acre.

The Zoning Committee Recommended: **Approval**, for the reason provided by staff.

The Staff Recommended: **Approval**, for the following reason:

1. The requested Planned Neighborhood Residential (R-3) zone is in agreement with the 2007 Comprehensive Plan, for the following reasons:
  - a. The Plan recommends Medium Density Residential (MD) future land use for the subject property, defined as 5–10 dwelling units per net acre. This would suggest a maximum of 248 dwelling units on the subject property.
  - b. The applicant proposes to develop 241 dwelling units on the subject property and about 6¼ acres to the south, for a residential density of 7.74 dwelling units per net acre.
  - c. The proposal provides for the collector street system to connect via the intersection of Twain Ridge Drive and Agape Drive on the subject property, as generally recommended by the Land Use Element of the 2007 Plan.
2. This recommendation is made subject to approval and certification of ZDP 2013-58: Harvey Property (E. Maurice Neal Property, W.E. Savage Property & Hampton Springs) prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
3. Under the provisions of Article 6-7 of the Zoning Ordinance, the following restrictions are recommended via conditional zoning:
  - a. A maximum of 248 residential dwelling units shall be permitted on the subject property.
  - b. A 20-foot wide landscape buffer and a Tree Protection Area shall be provided along the common property line of the subject property and 4420 Old Schoolhouse Lane (Stringer Property). Existing trees within 20' of the northern property line (extending as far as 150' from the northwest property corner to the east) and 10' thereafter shall be preserved in this buffer. All trees (with a DBH greater than three inches) shall be maintained, and only dead or diseased trees or those within a proposed right-of-way may be removed within this buffer area.
  - c. A solid fence or wall, a minimum of 7' in height, shall be installed within this required landscape buffer if the existing earthen berm is removed from this area.

These restrictions are appropriate and necessary in order to ensure compliance with the Comprehensive Plan land use recommendation; to protect the character of the South Elkhorn School House, an historic structure which is listed on the Kentucky state registry of historic places; to minimize the impact of future development on the structure and its surrounding property; and to maintain the existing tree stand at this location.

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- b. ZDP 2013-58: HARVEY PROPERTY (E. MAURICE NEAL PROPERTY, W.E. SAVAGE PROPERTY & HAMPTON SPRINGS) (9/1/13)\* - located at 4500, 4524 & a portion of 4574 Old Schoolhouse Lane.  
(EA Partners)

The Subdivision Committee Recommended: Postponement. There were questions regarding the open space provided.

Should this plan be approved, the following requirements should be considered:

1. Provided the Urban County Council rezones the property R-3; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Greenspace Planner's approval of the treatment of greenways and greenspace.
7. Department of Environmental Quality's approval of environmentally sensitive areas.
8. Delete honeysuckle from tree inventory information.
9. Addition of Old Schoolhouse Lane cross-section.
10. Addition of greenway access locations.
11. Addition of appropriate protection measures for the spring.
12. Discuss open space to be provided.
13. Discuss restricted access to apartment complex.
14. Discuss buffer adjacent to A-U zoned property.
15. Discuss off-site road improvements.
16. Discuss TPA proposed for the Burr Oak.

Zoning Presentation: Ms. Wade presented the staff report and began the staff's presentation of the zoning report by briefly orienting the Commission to the location of the subject property, which has frontage along Old Schoolhouse Lane. Old Schoolhouse Lane is a service road for Harrodsburg Road in the vicinity of that roadway's intersection with Military Pike. Twain Ridge Drive exists as a stub street into the subject property. Ms. Wade noted that the Fayette/Jessamine County line is to the south of the subject property, and Man o' War Boulevard is to the northeast. She said that several other properties to the north and northeast remain zoned A-U; the other zoning in the area is all residential, with the majority of the parcels being developed for single family residential use. Ms. Wade displayed a photograph of the subject property, noting the location of the significant floodplain area to the rear of the property. That floodplain area would require the construction of a bridge in order for Twain Ridge Drive to be continued in this area; the petitioner is not proposing to make that connection, but rather to connect Agape Drive from the south. The petitioner is also proposing to continue to use Old Schoolhouse Lane in its existing configuration.

Ms. Wade stated that the petitioner is proposing to rezone the subject property to R-3 in order to construct a mix of 196 multi-family dwellings, in seven buildings, and 45 single family homes. She explained that the subject property for this request is approximately 25 acres in size; it includes a one-acre parcel, and a 24-acre parcel. The petitioner is proposing to utilize the rear portion of another parcel as well, which provides an additional six acres of developable land. That property is depicted on the development plan, but is not part of this rezoning request, as it was rezoned in 1996 when a church located there. At that time, the property was approved for 100 townhouse units, to be located behind the church building. Ms. Wade said that those townhomes were never constructed, and the petitioner is proposing to purchase that parcel from the church so that it can be incorporated into this development plan.

Ms. Wade displayed the following photographs of the subject property: 1) a view of Old Schoolhouse Lane from the Harrodsburg Road right-of-way, noting the significant grade change; 2) a view of the approximately 300-year-old Burr Oak on the subject property; 3) a view of the Twain Ridge Drive stub street; 4) an aerial view of the subject property, noting the locations of Agape Drive, Twain Ridge Drive, and the English Station subdivision.

Ms. Wade stated that the 2007 Comprehensive Plan recommends Medium Density Residential use for the subject property, as well as for the six-acre church property immediately to the south. Medium Density use is defined by the Comprehensive Plan as 5 – 10 dwelling units per acre. Ms. Wade said that the petitioner's proposal falls within the Plan's Medium Density Residential land use recommendation. When the proposed density is calculated for the entirety of the subject property, the result is 7.74 dwelling units per acre. However, if the church property and the associated dwelling units proposed on that site are removed from the calculation, the resulting density is approximately nine dwelling units per acre, which is still within the Plan's Medium Density Residential recommendation.

Ms. Wade stated that the 2007 Comprehensive Plan also recommends the continuation of Twain Ridge and Agape Drive, which are the two collector streets in the area. The continuation of Twain Ridge Drive to the most appropriate location, directly across from Military Pike, would require the removal of a significant Burr Oak tree, however. There was a great deal of concern about the tree during the 2008 rezoning request for the subject property, so the peti-

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tioner is proposing to not configure Twain Ridge Drive as depicted in the Comprehensive Plan; but, rather, to widen and utilize the property's existing driveway, in order to provide some connectivity to Harrodsburg Road. Ms. Wade stated that the petitioner is proposing to connect Agape Drive, to the south, which could connect to the English Station development, and to the Dogwood Trace neighborhood, if the last remaining agricultural parcel was developed.

Ms. Wade noted that a Traffic Impact Study was required as part of this request, which would be addressed in a presentation by the MPO staff. She added that the planning staff recommended some conditional zoning restrictions for the subject property due to the location of a historic resource, the Old Schoolhouse, almost directly on one of the northern property lines. The staff is recommending three conditional zoning restrictions, which are listed in the staff report and on the agenda, to protect that resource and limit the density in that portion of the subject property only. Ms. Wade stated that the staff and the Zoning Committee are recommending approval of this request, for the reasons as listed in the staff report and on the agenda.

Development Plan Presentation: Mr. Martin presented the associated preliminary development plan, noting that a revised staff recommendation had been distributed to the Commission members prior to the start of the hearing.

Referring to the rendered development plan, Mr. Martin noted the locations of the proposed Agape Drive and Twain Ridge Drive connections. He stated that Rhema Way is located along the rear of the subject property, in the vicinity of the South Elkhorn Creek's floodplain area. A greenway area and trail are proposed to be located near the rear of the property, along the greenway; and the trail system is planned to connect with another part of the greenway system, in order to allow pedestrians to cross under Harrodsburg Road. The petitioner is proposing to construct Twain Ridge Drive through the subject property, to intersect with Old Schoolhouse Lane.

Mr. Martin stated that the petitioner is proposing to construct seven multi-family buildings with a pool, clubhouse, gazebo, walking trail, and associated parking. The seven multi-family buildings are proposed to be three stories in height, with 196 units, and 348 total bedrooms. The total square footage proposed for the site is 115,800 square feet, made up of one-, two- and three-bedroom units. The petitioner is also proposing to construct 45 single family dwelling units, to the rear of the subject property.

Mr. Martin stated, referring to a "gap" in the development plan, that that portion of the property was the subject of a lawsuit some years ago. The courts ruled that the connection of Twain Ridge Drive was a necessary piece of public infrastructure; and, that at some point, it must be constructed, at the taxpayers' expense.

Mr. Martin said that the Subdivision Committee originally recommended postponement of this plan, based on the staff's initial concerns about the proposed open space and the need to meet the open space requirement. He explained that, since that time, the petitioner has revised the plan, and is currently meeting the required amount of open space. The staff was subsequently concerned about the proposed lot coverage on the property. This prompted the petitioner to submit another revised plan, which met the lot coverage to within 16 square feet of the 25% requirement. Mr. Martin stated that the staff was initially concerned about the proposed vehicular access to the apartments as well. With the most recent revision to the plan, the petitioner has shifted some of the proposed accesses in order to better accommodate emergency vehicles.

Mr. Martin stated that, at the time of the 2008 rezoning request, there was some concern expressed about an existing spring on the southwest corner of the property. The petitioner performed some preliminary examinations of the spring, and discovered that a significant amount of water does flow there during heavy rain events. The staff was concerned about providing appropriate protection for the spring, particularly since that portion of the property is proposed to be subdivided into single-family lots. This has resulted in a revised condition, as the staff believes that it might be possible to incorporate the spring into the adjacent greenway system. These details could be resolved at the time of a Final Development Plan and/or Preliminary Subdivision Plan for the property.

Mr. Martin noted that, since this was a Preliminary Development Plan, the Commission would have the opportunity to review a Final Development Plan and/or Preliminary Subdivision Plan for the property as well. The Preliminary Subdivision Plan would allow the petitioner to construct the streets and infrastructure for the property. Following their construction, the Agape Drive connection and other streets could then be dedicated to the public via the Planning Commission's approval of a Final Record Plat for the property. At the time of the dedication of the Agape Drive connection, the English Station access to Old Schoolhouse Lane is proposed to be closed, since that subdivision will then have access to Harrodsburg Road via the extension of Twain Ridge Drive.

Mr. Martin stated that the petitioner has offered to provide a buffer along the northern property line, consisting of a six-foot diamond-mesh fence, with trees. The proposed conditional zoning restrictions for the property require a berm, as well. Should that berm not be constructed, a seven-foot fence would be required.

Mr. Martin said that, immediately prior to the beginning of this hearing, the staff was presented with an exhibit from a study that was done several years ago, in conjunction with a Harrodsburg Road widening project. Federally funded projects typically require extensive cultural, archeological, and environmental studies. Referring to the exhibit dis-

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played on the overhead projector, Mr. Martin stated that it depicts the approximate location of a pre-Columbian burial mound on the subject property. According to the exhibit, the burial mound would be located on the property, between two of the multi-family buildings. The petitioner was made aware of this issue, and they indicated that they had re-source material that placed the location of the burial mound to the south of the subject property. Mr. Martin said that the staff was recommending that a condition be added to this plan to address the issue of the burial mound, noting that the applicant would need to verify that the location is not on the subject property. He added that the petitioner's materials indicated that the mound is approximately .5 mile south of Elkhorn Creek, which would place it further to the south and west of the subject property.

Mr. Martin stated that the staff was recommending the following revised conditions:

1. Provided the Urban County Council rezones the property R-3; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Greenspace Planner's approval of the treatment of greenways and greenspace.
7. Department of Environmental Quality's approval of environmentally sensitive areas.
8. Delete honeysuckle from tree inventory information.
9. Addition of Old Schoolhouse Lane cross-section.
10. Addition of greenway access locations.
11. ~~Addition of appropriate protection measures for the spring~~ Denote: The treatment, ownership and appropriate protection measures for the spring shall be determined at the time of the Final Development Plan and/or Preliminary Subdivision Plan.
- ~~12. Discuss open space to be provided.~~
- ~~13. Discuss restricted access to apartment complex.~~
- ~~14. Discuss buffer adjacent to A-U zoned property.~~
- ~~12.15. Discuss~~ Resolve off-site road improvements at the time of the Final Development Plan and/or Preliminary Subdivision Plan
- ~~13.16. Discuss TPA proposed~~ Denote: Additional mitigation/protection measures for the Burr Oak shall be determined at the Final Development Plan.

Mr. Martin stated that condition #11 refers to the staff's concerns about the protection of the existing spring on the property, which is to be resolved at the time of the Final Development Plan. The staff also recommended that the off-site road improvements should be resolved at the time of the Final Development Plan. Mr. Martin said that there had been a great deal of discussion about the significant Burr Oak tree on the property, which the petitioner was proposing to protect. He explained that a Tree Protection Plan for the property would be required at the time of the filing of a Final Development Plan; the staff is recommending condition #13 in order to ensure that Best Management Practices would be used in the mitigation and protection of the Burr Oak tree.

Mr. Martin added that the petitioner is proposing 358 parking spaces for the subject property, which was just slightly over the minimum required number of 346. That number includes 84 garages proposed in conjunction with the multi-family residential units.

Commission Questions: Mr. Penn asked if providing for the mitigation of the spring would take the area of a full lot. Mr. Martin answered that it could, depending on how the lots were laid out, impact more than one lot. Mr. Penn asked if that lot would be buildable. Mr. Martin responded that he did believe that lot would still be buildable, but the market could decide otherwise.

Mr. Wilson asked if another condition should be added to address the issue of the burial mound. Mr. Martin replied in the affirmative.

Mr. Owens asked, with regard to Mr. Martin's comment about the future closing of the English Station access to Harrodsburg Road, what the reasons were behind that closure. Mr. Martin answered that, when the English Station subdivision was developed, the proposed collector street system in the area had been included in the Comprehensive Plan for some time. The intent was for English Station to be served by the collector street system, without direct access to the arterial roadway. Mr. Martin noted that there was a provision on the English Station plan, which was approved by the Planning Commission, that that access would be closed. He added that most of the residents of English Station were aware of that provision.

Mr. Berkley asked if the former Harrodsburg Road configuration was in place when English Station was developed, to which Mr. Martin responded affirmatively. Mr. Berkley asked how the subdivision would function following that closure, if English Station could be connected only on one side, rather than both sides. Mr. Martin answered that the

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closure would likely take place at the time that Agape Drive was connected to Twain Ridge Drive through English Station and the subject property. He added that the Commission could also discuss delaying that closure until Agape Drive was fully constructed to the south through the adjoining undeveloped property.

Staff Comment: Ms. Wade stated that the staff had received several emails in opposition to this request, which she distributed to the Commission members for their review.

Traffic Impact Study Presentation: Mr. Conyers presented the staff report on the petitioner's Traffic Impact Study (TIS), which was conducted by Diane Zimmerman of Jacobs Engineering Group. He stated that the petitioner predicted full development of the subject property in 2015.

Mr. Conyers said that, following a major improvement project in recent years, Harrodsburg Road (US 68) carries approximately 33,000 vehicles daily north of the subject property to Man o' War Boulevard, and 26,000 just south of the subject property. In order to predict the average daily trips for the site, the Zoning Ordinance requires that the petitioner consider peak-hour traffic. The a.m. peak hour is projected to produce 141 new trips for the proposed development, with 30 entering the property and 111 exiting. The p.m. peak hour is projected to produce 176 trips, with 113 entering the development and 63 exiting. With regard to the projected trip distribution, Mr. Conyers stated that the TIS indicated that approximately 95% of the traffic from the subject property was expected to be traveling to and from the north, with the remaining 5% divided between traveling to the south and toward Military Pike.

Mr. Conyers said that the intersection Levels of Service (LOS) are not predicted to experience much of a change, with just small increases in delay per vehicle during the a.m. and p.m. peak hours. He noted that, although the LOS "E" and "F" appeared to indicate a very long delay, it was intended to allow for the additional "green time" allotted to the arterial roadway during rush hour traffic. Given the large traffic volume during those times, vehicles attempting to access the arterial via a right-hand turn from a minor street might be forced to wait through a couple of light cycles, in order to prevent traffic on the arterial from backing up.

Mr. Conyers stated that the staff agreed that the petitioner's TIS met the requirements of the Zoning Ordinance, and the staff was in agreement with its findings. He encouraged the Commission members to take into consideration the staff's recommendations for the development plan, as well as the need for bicycle and pedestrian facilities on the property.

Petitioner Representation: Bill Lear, attorney, was present representing the petitioner. He stated that this rezoning request was fully supported by the staff, for a mixture of single-family and multi-family housing, and was also in compliance with the current and several past Comprehensive Plan recommendations. The project will be "the type of housing one would expect to find in a Medium Density Residential development, located in the place you would expect to find it." Harrodsburg Road is primarily a residential mixed-use corridor; along all of the other major arterials in the south/southwestern part of Fayette County, multi-family housing has been integrated successfully with single-family homes.

With regard to the Comprehensive Plan recommendation for the subject property, Mr. Lear stated that the proposed development falls well within the Medium Density Residential recommendation of 5-10 dwelling units per acre. As early as the 1980 Comprehensive Plan, one portion of the property was recommended for High Density Residential use, with the other half recommended for Medium Density. Each successive Comprehensive Plan, from 1988 to the present, has recommended the subject property for Medium Density Residential development.

Mr. Lear said that the proposed development also includes all of the street connections recommended by the Comprehensive Plan. He noted that, although this plan provides for the connection of Twain Ridge Drive, the petitioner is not proposing to construct it, because it would involve extensive infrastructure across a major floodway. Twain Ridge Drive was the basis for a court case, in which Mr. Lear was a participant, that demonstrated that the burden of a major infrastructure improvement designed to benefit an entire area could not be imposed on the developer of a relatively small development. That case also gave rise to the exactions program that was used in the Expansion Area to provide for such circumstances. Mr. Lear stated that Twain Ridge Drive and Agape Drive have been depicted as local collector streets for the area since the 1988 Comprehensive Plan.

Mr. Lear stated that the petitioner was in agreement with all of the staff's recommendations for the development plan. He said, with regard to the issue of the burial mound, that, if it existed at all today, it was not located on the subject property.

Mr. Lear stated that the petitioner has also worked with two neighbors of the subject property to reach some agreements to offer greater protection for their properties. He said that that restriction was drafted after working with the Stringer family, and it should be acceptable to the staff. The agreement that the petitioner has reached with the Stringer family would slightly modify one of the proposed conditional zoning restrictions. The proposed revision, to conditional zoning restriction "b," would read:

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"A 20-foot wide landscape buffer area shall be provided along the common property line of the subject property and 4420 Old Schoolhouse Lane (Stringer Property). Existing trees with a DBH greater than three inches within 20 feet of the Stringer Property line and extending as far as 150 feet from the northwest property corner to the east, and ten feet thereafter, shall be preserved and maintained in this buffer, except that dead or diseased trees or trees that may present a hazard due to their formation, branching or other condition may be removed. Trees within a proposed right-of-way or easement may be removed. Bush honeysuckle and other invasive plant growth may be removed."

Mr. Lear stated that the petitioner has also been working with the Porter family, and has reached the following agreement with them:

"The developer, Ball Homes, acknowledges their deep concern for proper stormwater management for the development of the property, and Ball Homes commits to comply with all requirements of the LFUCG Stormwater Manual as those are determined and applied by the Department of Environmental Quality and Public Works. In addition, Ball Homes has agreed to provide Porter with copies of all documentation related to any watershed studies and stormwater mitigation plans submitted to the Urban County Government in conjunction with the plans for the development of the property."

The petitioner has also agreed that, if the Porter family finds any of the documentation to be deficient, they are not waiving their right to bring their concerns to the Urban County Government.

With regard to the significant Burr Oak tree on the site, Mr. Lear stated that it received a great deal of attention during the previously attempted rezoning for the subject property. The petitioner has retained Ian Hoffman, from Big Beaver Tree Service, to oversee the protection of the tree, and received recommendations from Tim Queary, Urban Forester. Mr. Queary recommended that the 50-foot protection radius should be sufficient to protect the "drip line" of the tree. Mr. Lear noted that Mr. Queary had also acknowledged that the presence of an existing driveway near the tree did not seem to have damaged it. He read the following statement from Mr. Queary's report:

"Following this Tree Protection Plan will increase the probability that the tree will survive and flourish."

Mr. Lear said, with regard to the previously mentioned pre-Columbian burial ground, that the petitioner retained the services of Cultural Resource Analysts, who conducted both an on-site study and a review of the records of the property. He entered their report into the record of the meeting, and read the following from the cover letter:

"This letter is to inform you of the results of the archeological records, review, and reconnaissance survey we conducted at your request for the proposed development of the Harvey Property. No prehistoric cultural material was identified during the reconnaissance survey of the property, and no obvious evidence for the presence of human remains was noted. The records review indicated that one previously-recorded archeological site was located on the property. This site, however, was later determined to be located well outside of the project boundary, meaning that the State files were in error."

And the following, from the summary of the investigation:

"The OSA (Office of State Archeology) review indicated that one prehistoric archeological site was located within the proposed project area. The OSA location data for that site, however, is very likely incorrect, according to Webb and Funkhouser, 1932, who first recorded it, the site is actually .5 mile south of South Elkhorn Creek along Harrodsburg Road, placing it well outside the proposed project area. Additionally, a reconnaissance survey of the project area did not reveal any obvious prehistoric burial locations, cemeteries, or mounds. Based on these results, there does not appear to be any prehistoric burials located within the proposed project area. There are also no previously recorded archeological sites within the project area that are eligible for or listed on the NRHP (National Register of Historic Places). Lastly, based on the environmental assessment report by Childress and Associates, the majority of the project area has been extensively modified by modern landscaping activities, including the use of heavy equipment and infilling. If prehistoric archeological sites were ever present in this area, then they have likely been destroyed by modern use."

Mr. Lear stated that this study was completed by an accredited source, which should put to rest the question of whether or not a burial mound exists on the site. He said that the petitioner commissioned the study to satisfy the concerns of several individuals who indicated that they had heard a rumor that the site was an ancient burial ground.

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Mr. Lear said, with regard to the Traffic Impact Study, that the staff concluded that the impact of the proposed development would be minimal, particularly with regard to the Harrodsburg Road/Military Pike intersection. He opined that, by urban standards, all of the projected Levels of Service were well within the acceptable range.

Commission Questions: Mr. Owens asked when the burial ground report was commissioned. Mr. Lear answered that the field study was conducted on July 11, 2013, and the cover letter was dated July 23, 2013.

Mr. Wilson asked, with regard to the rumor of a prehistoric burial ground on the property, who should be responsible for conducting the investigation. Mr. King responded that the onus would be upon the owner/developer to investigate.

Mr. Penn asked if the study indicated the exact location of the archeological feature that was posited to exist .5 mile to the south of the subject property. Mr. Lear responded that that location was within an existing subdivision.

Citizen Support: Jeff Stringer, 4420 Old Schoolhouse Road, stated that he purchased the South Elkhorn one-room schoolhouse in 1983, and he and his wife have lived there and maintained the historic nature of the structure since that time. The structure is part of the Bluegrass Trust for Historic Preservation, and is recorded with the State.

Mr. Stringer said that, at the time of the 2008 rezoning request for the subject property, he spent a significant amount of time and energy to determine whether he would be able to continue to live on his property and protect the historic structure, given the scope of that proposed development. In 2013, the petitioner approached Mr. Stringer about their interest in developing the subject property, and immediately began working on a scenario that could protect the historic character of his property. The one-room schoolhouse is located 10 feet from the shared property line with the subject property, so the petitioner's involvement was crucial in developing a plan that was sensitive to their needs. Mr. Stringer stated that he and his wife were satisfied that the agreement they reached with the petitioner would protect the historic nature of the structure, as well as the historic fence line on their property. He said that he and his wife were pleased with the proposed development, and they felt very comfortable in supporting this request, with the layout that is currently proposed.

Citizen Opposition: Ray Waits, 2200 Old Higbee Mill Road, stated that the petitioner had worked with several of his neighbors to address their concerns, but he did not believe that they had made an effort to work with him, despite the fact that his family had owned their property for 170 years. Mr. Waits said that he had a security problem on his property; he has had trailers and other property destroyed, and animals harassed and killed. He believed that he needed a fence to protect his property from the new residents of the proposed development. He noted that the petitioner had indicated that he would "do what is allowable under the law" to help mitigate that issue. Mr. Waits added that he believed that the fence should extend from the Porter Property to Twain Ridge Drive along his property line.

Mr. Waits stated that he was aware that the fence would have to extend across the creek, but he believed that was necessary, since children use the creek as a means to access his property. He said that his property and the Porter property were an "attractive nuisance" for children from the nearby neighborhoods. He would like to have some reassurance that the petitioner will work with him to provide a fence for his property.

Commission Questions: Mr. Owens asked Mr. Waits to indicate the location of his property. Using the rendered map, Mr. Waits stated that his property adjoins the subject property across the creek; he noted that the petitioner purchased some parcels in the vicinity from his family.

Ms. Beatty asked if Mr. Waits' property was currently fenced. He responded that the property was fenced at some point, and evidence of the fence remained. He added, however, that, although the creek runs parallel to his property line, he has never seen it hold water.

John Yozwiak, 4860 Bud Lane, stated that he was representing the Dogwood Trace Neighborhood Association, of which he was president. He read the following from the staff report on this rezoning request:

"The proposal provides for the collector street system to connect via the intersection of Twain Ridge and Agape."

Mr. Yozwiak said that he believed that "the bridge to Twain Ridge was never going to happen." He stated that, if Twain Ridge Drive was not connected, the only connector street for the proposed development would be Agape Drive, which could result in all of the traffic from the proposed development being routed through the Dogwood Trace neighborhood. Mr. Yozwiak questioned how the staff could recommend approval of this request, given that there was little likelihood that the Twain Ridge Drive bridge will ever be constructed.

Mr. Yozwiak stated that he was present at the previous rezoning hearing for the subject property. He opined that the proposed development was "actually worse from a density standpoint" than the 2008 proposal, and that the "density numbers were cooked," since the floodplain area could never be developed. Mr. Yozwiak stated that he believed that

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the development proposed was actually high density, rather than medium density, and he did not believe that that was ever intended by the Comprehensive Plan.

Christina Dudek, Firebrook resident, stated that she, too, was present at the hearing five years ago. She said that her greatest concern at that time was the fate of the Burr Oak tree, and she was still concerned about it. Ms. Dudak stated that the existing driveway, which has not negatively impacted the tree, was very narrow. She does not believe, however, that the tree could remain healthy if that driveway was widened, and heavy construction equipment was used nearby.

Ms. Dudak said that she was also concerned with the capacity of the public school system in the area to handle the number of children that will reside in the proposed development.

Ms. Dudak stated that there was a condominium development north of Old Higbee Mill Road that was never completed; many of the condos were for sale, and some were now bank-owned. She said that she questioned the need for additional housing in the area when there were unoccupied units nearby.

Ms. Dudak stated that she was also concerned that the petitioner's Traffic Impact Study might have been completed during the summer months, so it did not accurately reflect the actual traffic patterns in the area. She added that the possible existence of a burial mound on the subject property should have been disclosed prior to the hearing, and that she believed that the answers about the actual location of the burial mound were "iffy."

Lanita Clarke, 4728 Matthew Court, stated that she had lived in Dogwood Trace for 23 years. She echoed Mr. Yozwiak's concerns about the lack of a connection to Twain Ridge Drive, noting that all of the traffic from the proposed development would therefore be routed through her neighborhood.

Ms. Clarke stated that she did not believe, even if the Agape Drive connection was made in the future through the undeveloped parcel adjoining the subject property, that Agape Drive was wide enough to be a collector street. She said that many Dogwood Trace residents bought homes on Agape Drive because it was quiet and safe, and they did not expect it to be opened to through traffic. Ms. Clarke added that Agape Drive was also a connector to the Kroger shopping center; she did not believe that residents of the proposed development would "go through three stoplights on Twain Ridge" when they could access the shopping center directly via Agape Drive. She concluded by opining that the proposed development would make her neighborhood more dangerous and congested.

Bob Pattie, 2500 Sungale Court, stated that the rear of his Firebrook residence faced the subject property. He said that he had measured Agape Drive and Rhema Way, and they were both 29.5 feet wide. He that, in order to take those measurements, he had to wait for a delivery truck to move in order to be able to access the end of Agape Drive. Mr. Pattie stated that he believed that, if Agape Drive was the only collector street for the area, it would constantly be blocked by vehicles making deliveries, because there was no prohibition against parking on the street.

Mr. Pattie stated that he was a retired supervisor for the Kentucky Department of Transportation, and he was very familiar with the construction and carrying capacity of road beds. He opined that Old Schoolhouse Road would need to be removed and completely reconstructed in order to accommodate the amount of traffic that could be generated by the proposed development.

Mr. Pattie added that he was also concerned about blasting that would occur during the development of the subject property. He said that blasting during the Harrodsburg Road construction process damaged his home and the lower lake in the Firebrook subdivision.

David Kolpek, 2408 Doubletree Court, stated that his residence was located very near Agape Drive. He stated that he did not agree that the proposed development was in compliance with the recommendations of the Comprehensive Plan, since the necessary street connections were unlikely to ever be completed. Mr. Kolpek added that Agape Drive was originally planned to be 40 feet wide; but, when it was developed in the late 1980s, the developer received permission to construct the portion located just south of Dogwood Trace at a width of 30 feet. He said that 1,000 feet of the roadway, therefore, would be too narrow to be considered a collector street. Mr. Kolpek opined that the proposed development and surrounding area "needed more planning." He urged the Commission to consider rezoning the subject property at a lower density, or disapproving this request.

Shannon Buzard, 4779 Scenicview Road, stated that she opposed this request. She read the following excerpt from the Zoning Ordinance with regard to the A-U zone:

"This zone is intended to control the development of rural land within the Urban Service Area over a period of time, so as to manage the growth of the community. In order to avoid premature or improper development, land should remain in this zone until public facilities and services will be adequate to serve urban uses."

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She also read the following, with regard to the R-3 zone:

"This zone is primarily for multi-family dwellings and other residential uses. This zone should be at locations at the density recommended by the Comprehensive Plan and in the areas of the community where necessary services and facilities will be adequate to serve the anticipated population."

Ms. Buzard stated that both of those descriptions hold the decision-making process accountable to provide services adequate to meet the growth in population. She opined that that assurance was not evident in this proposed rezoning, which could turn a parcel with agricultural potential into a "disturbed land with double density compared to surrounding areas." Ms. Buzard asserted that, although the petitioner contends that the proposed development is in agreement with the recommendations of the Comprehensive Plan, it has not been shown to be appropriate or necessary.

Ms. Buzard said, with regard to the street connections recommended by the Comprehensive Plan, that she believed that neighborhood residents should have the right to determine whether or not roads will connect through their communities.

With regard to the adequacy of services for the subject property, Ms. Buzard stated that the district schools that served the area were currently over capacity. In particular, Paul Laurence Dunbar High School was 681 students over capacity in 2012. She added that, in 2010, the Fayette County census cited a total of 12,117 vacant housing units, which, she believed, indicated that additional residential units were not necessary. Ms. Buzard requested that the Planning Commission require the petitioner to submit detailed proposals about the type of housing to be constructed on the subject property, including disclosures about rentals and subsidized housing.

Ms. Buzard concluded by reading the following:

"The Planning Commission of each unit shall prepare a Comprehensive Plan, which shall serve as a guide for public and private actions and decisions, to ensure the development of public and private property in the most appropriate relationships. The elements of the Plan may be expressed in words, graphics, and other appropriate forms; they shall be inter-related; and each element shall describe how it relates to each of the other elements."

Ms. Buzard opined that the Comprehensive Plan should serve as a guide, not a mandate. She read the following, from the Constitution of the Commonwealth of Kentucky:

"Absolute and arbitrary power over the lives, liberty, and property of free men exists nowhere in a republic, not even in the largest majority."

Kenneth Collins, 4717 Trace Court, stated that he moved to Kentucky in 1995 "to find an urban environment that had green sensibilities and commitments." He said that he was not convinced, however, that those sensibilities continue today.

Mr. Collins stated that the Burr Oak tree on the subject property dates back to 1708. He opined that the arborist's opinion about the probabilities for the tree's survival were not enough to provide for its protection.

Mr. Collins said that the roadway near the Burr Oak was very steep, and it acted as a traffic bottleneck; he believed that that bottleneck would only worsen with the added traffic caused by the proposed development. Mr. Collins opined that the proposed development "was not moving in a green direction," and that it could be done in a better fashion.

Roger Marion, 2430 Dogwood Trace Boulevard, stated that he was a retired geologist with over 30 years of training in geology, seismology, and blasting. He said that he had worked with proposals focused on blasting and karst topography in particular. Mr. Marion stated that he was concerned about the possible effects on his home from blasting, leveling, and recontouring on the subject property as part of the development process.

Mr. Marion said that the effects of blasting could range from ground vibration and airwave blasts to effects on vegetation, groundwater, and karst features. He opined that, at the minimum, the development plans for the subject property should include pre-blast surveys of adjacent properties, as well as plans to monitor and record findings before and after blasts to demonstrate compliance with governmental standards. In addition, the developer should be prepared to submit a detailed characterization of the site and area geology, with special attention to trees and their support root system; karst structures; surface groundwater flow; and the inter-connections of those features with the surrounding area. Mr. Marion stated that such testing was particularly important, given the close proximity to residential structures, and the historical character of several nearby buildings.

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Mr. Marion said that he was also concerned about the effects of blasting on ground water. He stated that karst structures protect a delicate balance of water, flora, and fauna; and "any change in the balance of water flow rates, chemistry, or pollutants can be disastrous." Mr. Marion opined that the overall viability of the greenspace in the vicinity of the subject property could be jeopardized if the surface and ground water were sufficiently disturbed by construction and blasting activities. The location of an active spring on the property and the potential development of sinkholes were also major concerns, he noted, and added that he believed that drilling and blasting of limestone on the site could also create safety concerns and significant traffic disruptions. Mr. Marion asked that the Commission members consider all of these issues when making their decision on this rezoning request.

Roger Schnabel, 4780 Agape Drive, stated that he had lived in his home for 24 years. He opined that the proposed development could bring up to 500 additional cars to the area, and he did not believe that Agape Drive could handle the additional traffic volume. Mr. Schnabel encouraged the Commission members to drive through the neighborhood prior to making a recommendation on this request.

Dr. Lauren Larson, Dogwood Trace resident, stated that the subject property was an environmentally restricted area due to the Burr Oak tree and the creek. She said that she believed that there were additional underground springs on the property that had yet to be discovered, and she was concerned about the effects of blasting and construction on those areas.

Dr. Larson stated that she and her neighbors were primarily concerned about traffic; increased density; preservation of the greenway; and maintaining the survival of the Burr Oak tree. She opined that she "did not want to see the tree die for a road that will never be constructed," and that the Twain Ridge Drive bridge should not be constructed using taxpayers' money. Dr. Larson added that she did not believe that the petitioner would follow their arborist's recommendations for maintaining the tree, which she believed would require at least a 150-foot buffer. She said that Lexington-Fayette County has been designated as a Tree City, U.S.A. since 1989; and, as such should be working to protect historic and significant trees.

Dr. Larson stated that the subject property was an environmentally sensitive area. She read the following definition from the Subdivision Regulations:

"An area, due to its natural or physical setting, which may have environmental problems with regard to development. Detailed site planning will be necessary to overcome the physical limitations of the land. Environmentally sensitive areas will be subject to more restrictive regulations."

Dr. Larson said that no geotechnical, hydrogenic, hydrologic, or post-development floodplain or stormwater studies or analyses had been prepared to address the proposed development and the effect it could have on the surrounding area. She opined that, although a Traffic Impact Study was submitted, she "did not trust the numbers" and would like to see more details, particularly with regard to the projected numbers of cars entering and exiting the proposed development.

Dr. Larson stated that she and her neighbors would have to live with the possible repercussions of the proposed development for many years, and she asked that the Commission members disapprove this request. Dr. Larson submitted into the record of the meeting a petition gathered from the residents of the Clemens Heights and English Station neighborhoods.

Josh Fain, 4801 Dresden Way, stated that he was not opposed to the petitioner or the proposed development in general, but that he was opposed to "development for development's sake." He said that the petitioner was currently developing apartment and townhouse units at the intersection of Man o' War Boulevard and Winthrop Way, which were scheduled for completion at the end of 2013. Mr. Fain opined that the petitioner was "flooding the area with development" without being aware of the vacancy rates of many of the other multi-family developments in the same vicinity. He added that it did not appear that there was any need for this proposed development.

Mr. Fain stated that the subject property made up only a small part of the total land in Lexington-Fayette County. He said that he did not believe that there was a documented need to develop such a relatively small piece of land, particularly when it contained a historic tree, a spring, and possibly a burial mound, and an historic schoolhouse was located just feet away from the property line. Mr. Fain requested disapproval, adding that the proposed development might be more appropriate in the future, when there is a documented need for additional housing in the area.

Tom Kehler, 2310 Harrods Point Trace, asked that the Planning Commission consider rezoning the subject property to an R-1 or R-2 zone, rather than the proposed R-3 zone. He said that he believed that the proposed development was too dense.

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Mr. Kehler stated that he was primarily concerned about: 1) the proposed access to Harrodsburg Road, which he did not believe could be constructed to align properly with Military Pike, and the adequacy of Old Schoolhouse Lane to handle the additional traffic from the proposed development; 2) the proposed connections of Agape Drive and Twain Ridge Drive, which he did not believe would be successful, since most of the traffic from the proposed development would be traveling north; 3) the construction of the Twain Ridge Drive bridge, for which adequate funding has not been provided to date; and 4) the lack of strategically located park space for the proposed higher-density housing. He said that the greenspace proposed would not be sufficient as a play area for any children living in the multi-family units on the subject property. He added that those children would need park space adjacent to their dwelling units, where it would not be necessary to cross a busy road. Mr. Kehler concluded by opining that the solution for those concerns would be to revise the proposed rezoning request.

Fred Wohlstein, 4765 Rhema Way, stated that he believed that the proposed Twain Ridge Drive bridge would cost in excess of \$3 million, and he doubted that LFUCG would allocate those funds or construct the bridge. He said that the English Station subdivision connected to Old Schoolhouse Lane as an access road to Harrodsburg Road; the grade change at one point on that roadway was so steep that vehicles could not drive up the road in the winter, so drivers ended up parking on the street nearer to the intersection in order to be able to exit the area.

With regard to the possible connection of Agape Drive to the subject property, Mr. Wohlstein stated that Dogwood Trace residents had already requested that a stop sign be added at the intersection of that roadway with Dogwood Trace Boulevard due to excessively heavy traffic. He opined that the widening of Harrodsburg Road had significantly improved traffic in the area, but the proposed development could "circumvent" that improvement by adding more traffic in the area. Mr. Wohlstein stated that, in 2012, there were 24 traffic accidents on Harrodsburg Road between the Dogwood Trace entrance and the Man o' War Boulevard/Harrodsburg Road intersection.

Mr. Wohlstein stated that no one had mentioned the LFUCG Capacity Assurance Program, and its requirement that sufficient sanitary sewer capacity must exist for any new development. He said that the pump station in his area had capacity issues, as it does not meet the one-hour flow rate for a 24-hour storm event. Under the existing EPA Consent Decree, that capacity would have to be increased prior to the construction of the proposed development.

Mr. Wohlstein opined that, at this time, it was not in the community's best interest to develop the subject property. He said that the 1980 and 1988 Comprehensive Plans were dated, and they should no longer be used as a basis for a recommendation of approval for rezoning requests. Mr. Wohlstein added that it was more important to protect the historic resources and environmentally sensitive areas on the subject property.

Petitioner Rebuttal: Mr. Lear stated, with regard to the comments about street connections, that the proposed connectivity on the subject property was not dictated by the developer, but by standard planning principles and the recommendations of the Comprehensive Plan. He said that the petitioner intended to follow those recommendations by making the connections where they are possible now, and constructing stub streets to connect in the future, as other parcels develop.

Mr. Lear said that the petitioner also intended to preserve the Burr Oak tree. He noted, with regard to several comments about the existing driveway near the tree, that that driveway was as close to the tree as 10 or 15 feet. The petitioner is proposing to extend the tree protection area to 50 feet for construction of the new roadway. In addition, the petitioner was making provisions for the future construction of the Twain Ridge Drive bridge over the creek. Mr. Lear stated that he believed that if LFUCG proposed to build that bridge in the near future, there would be some people in this room today who would be there objecting to it," because it would bring additional traffic to their neighborhood from the Clemens Heights subdivision.

Mr. Lear stated that the first zone change case he handled was for Clemens Heights, in 1976. He said that he remembered when the entire area, including the Dogwood Trace and Firebrook neighborhoods, was still farmland. All of those neighborhoods were developed with blasting, grading, and cutting of roads, just as the proposed development would be constructed. Mr. Lear said that the minutes of the Planning Commission hearing for the Firebrook subdivision included seven pages of comments from objectors, who voiced many of the same concerns as the objectors at this hearing. All of the objections at this hearing came from people who live on property that was originally farmland, located on karst topography in the South Elkhorn area, that was developed in much the same way as the proposed development. Mr. Lear stated that he understood the objectors' sentiments, but he believed that their comments were "an example of those who live in properties developed earlier, objecting to a later property being developed."

Mr. Lear said, with regard to some of the neighbors' specific concerns, that the petitioner was always required to do a pre-blast survey, which was as much for their benefit as for the homeowners. With regard to Mr. Waits' comments about fencing on his property, he stated that, although the petitioner had not reached a specific agreement with Mr. Waits, they had agreed to work with him. Mr. Lear said that petitioner could not, however, construct a fence in the floodplain, so they had to determine how best to provide the protection that Mr. Waits wants. With regard to Mr.

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Wohlstein's concerns about the Capacity Assurance Program, he stated that the petitioner was well aware of, and would comply with, all of the regulations of that program.

Citizen Rebuttal: Justin Williamson, vice-president of the Dogwood Trace Neighborhood Association, stated that the number of residents who were concerned about this proposal was not small; he had held an earlier meeting with at least 40 people in attendance.

Mr. Williamson stated, with regard to the Burr Oak tree, that the community was fortunate that it was still standing after 300 years. He said that the existence of a driveway near the tree was not enough of a guarantee that road construction would not jeopardize the tree.

Mr. Williamson said that most of the residents of his neighborhood were not opposed to development in general, but they believed that there were several specific issues inherent in the strict application of the Comprehensive Plan recommendation to their area. He opined that it was unlikely that the Twain Ridge bridge would ever be built, and the topography of the area limited the accessibility of some of the other streets. In addition, the residents are concerned about the width of Agape Drive and its ability to handle the additional traffic from the proposed development. Mr. Williamson stated that he and his neighbors were in opposition to this request as proposed.

Staff Rebuttal: Ms. Wade stated that the staff had no rebuttal comments, but was available to answer questions from the Commission members.

Commission Questions: Mr. Owens asked if the staff could provide any information as to a possible time frame for the connection of Agape Drive, and some clarification as to its existing width. Ms. Wade responded, with regard to the possible connectivity, that Agape Drive could connect today, with the exception of the Camic Property, which was located to the south of the subject property at 4630 Old Schoolhouse Lane. The staff's understanding was that the property owner was not interested in developing that property at this time. Ms. Wade explained that, until that parcel is developed, there will not be a connection of Agape Drive. She added that parcel had a small access to Harrodsburg Road, but did not have access to Desdemona Way, to the east. Rhema Way and Agape Drive both have stubs on both sides of the Camic Property, and the Subdivision Regulations require that stub streets must be continued, particularly when they have the same road name on both sides. Ms. Wade noted that property owners in the area should have been aware of that eventuality. With regard to the street width, Casey Kaucher, Traffic Engineering, stated that, at its intersection with Dogwood Trace Boulevard, Agape Drive was 41 feet in width; approximately 200 feet from the intersection on each side, the right-of-way narrows to 31 feet in width. Mr. Owens asked if 31 feet was considered collector street width. Ms. Kaucher answered that the standard collector street width was 36 feet.

Mr. Penn asked if Agape Drive was always intended to be a collector street. Ms. Wade responded that it was recommended as a collector street by the Comprehensive Plan. Mr. Penn asked why the street was narrowed, to which Ms. Wade responded that those decisions were made by the Planning Commission.

Mr. Wilson asked if Rhema Way was the same width as Agape Drive, and if it could provide an alternative access to the subject property. Ms. Wade responded that Rhema Way was intended to continue as well. It is depicted on the development plan as having a stub into the southeast corner of the church property. However, on the last development plan filed for that property, it was noted that a spring had been discovered, and it became clear that continuation of Rhema Way to the north would negatively impact that spring. At this time, there is no intention to continue Rhema Way into the subject property, but it is the staff's understanding that it would be feasible to continue it to the south. Ms. Wade added that Rhema Way is a local street, which also connects to the Dogwood Trace subdivision.

Ms. Mundy asked, with regard to a comment that was made about some of the smaller subdivisions not having been made aware of this proposed rezoning, if notice was sent out. Ms. Wade answered that all property owners within 500 feet of the subject property were notified, as were all of the nearby registered neighborhood associations, within approximately 10 days of the filing of the application. She added that she was not aware of what process the associations might have for notifying their members, however.

Chairman Comment: Mr. Owens stated that the public hearing was now closed, and that the floor was open for discussion by the Commission members.

Mr. Owens thanked all of the citizens for being present and expressing their concerns about this proposed rezoning. He stated that he remembered when the Firebrook subdivision was a farm. Mr. Owens said that one rezoning request has already been attempted for the undeveloped subject property, which, he was certain, would be developed at some point.

Ms. Plumlee echoed Mr. Owens' appreciation for the citizen input. She stated that, when neighbors and developers work together on development projects, the result is better for everyone. Ms. Plumlee read the following, from the 2012 Comprehensive Plan Goals & Objectives:

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"Encourage compact, contiguous and/or mixed-use, sustainable development within the Urban Service Area, as guided by market demand to accommodate future growth needs."

Ms. Plumlee stated that she believed that the proposed development meets those criteria, but noted that she had concerns about the width of Agape Drive.

Ms. Beatty stated that she, too, was sensitive to the neighbors' concerns. She said that she was most concerned about the traffic, greenspace, preservation of the Burr Oak, and the possibility of a burial ground on the property. Ms. Beatty noted that she was also pro-development, and the area around the subject property was nearly fully developed. She said that she believed that, if an applicant wanted to develop a property appropriately, and it met the Comprehensive Plan recommendation, the Planning Commission should be supportive. Ms. Beatty added that the proposed development plan "might need more time to make it work better," particularly with regard to the uncertainty about traffic and the preservation of the Burr Oak tree.

Mr. Penn stated that he believed that this proposed development was much more appropriate for the subject property than the development proposed along with the 2008 rezoning request. He said that he still had some concerns, particularly about the preservation of the spring and the Burr Oak tree, but he believed that the staff could have those addressed at the time of a Final Development Plan for the property. Mr. Penn stated that the subject property would be developed at some point, despite its significant challenges. He said that he would support this rezoning request, because he believed that his concerns could be managed, and that the problem of the width of Agape Drive could be mitigated by prohibiting parking on one side of the street.

Mr. Brewer stated that the Commission members appreciated the citizens' comments. He said that this was not an easy decision, but he believed that the proposed development would be best solution for the subject property.

Mr. Wilson stated that he would like to add a new condition #14 to the development plan to require that appropriate action must be taken for the removal of any remains found to an acceptable location, should a burial ground be found on the property.

Zoning Action: A motion was made by Mr. Brewer, seconded by Mr. Cravens, and carried 11-0 (Drake abstained) to approve MAR 2013-13, with the revised conditional zoning restrictions, for the reasons provided by staff.

Commission Discussion: Mr. Owens noted that the staff had distributed revised conditions for the approval of the development plan, and that Mr. Wilson had proposed to add a condition with regard to the possible burial ground. He asked Mr. Martin if "resolve location of burial ground at the time of the Final Development Plan" would be sufficient for condition #14. Mr. Martin responded that the burial ground did not appear to be located on the subject property, and that was what the petitioner should document at the time of the Final Development Plan. He suggested alternative language to that effect. Mr. Wilson stated that he was concerned that the only archeological survey performed on the property had been conducted by the petitioner, who had a vested interest. He said that he believed that additional protection was needed for the possible burial ground, and that it would not hurt the petitioner to provide that extra layer of protection.

Petitioner Comment: Mr. Lear stated that the petitioner was agreeable to the proposed language provided by Mr. Martin.

Development Plan Action: A motion was made by Mr. Brewer, seconded by Mr. Cravens, and carried 11-0 to approve ZDP 2013-58, subject to the 13 conditions as listed in the revised staff recommendation, adding a new condition #14 to read: "Denote: The applicant will document that the archeological site is not on the subject property at the time of the Final Development Plan."

*Note: Chairman Owens declared a brief recess at 3:40 p.m. The meeting reconvened at 3:45 p.m. Mr. Brewer left the meeting at this time.*

### **C. FULL PUBLIC HEARINGS ON ZONING ORDINANCE TEXT AMENDMENTS**

1. **ZOTA 2013-4: VEHICLE REPAIR ACCESSORY TO A RESIDENTIAL USE** – petition for a Zoning Ordinance text amendment to clarify regulations related to vehicle repair accessory to residential uses.

INITIATED BY: Urban County Planning Commission

PROPOSED TEXT: Note: Underlined text below indicates an addition, and ~~stricken through~~ text indicated a deletion to the current Zoning Ordinance.

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## ARTICLE 1-11: Definitions

**AUTOMOBILE AND TRUCK REPAIR, MAJOR** - Rebuilding or reconditioning of engines or transmissions, vehicles or trailers; repair and collision service, such as body, frame, or fender straightening; painting and clear coating; upholstery; auto glass work, and the like.

**AUTOMOBILE AND TRUCK REPAIR, MINOR** - Minor repairs and routine maintenance, including oil and filter change auto inspection lanes, lubrication, engine tune-up, troubleshooting adjusting and replacement of lights, and brakes, and other prepackaged components, and tire rotation or replacement; but not including any operation specified under "Automobile and Truck Repair, Major."

## ARTICLE 3: GENERAL REGULATIONS

**3-8 General Regulations for Vehicle Repairs Accessory to a Residential Use**

- a. Vehicles being repaired shall be parked/stored on a paved surface or on a permitted or legally non-conforming gravel surface if a paved surface is not available.
- b. Major repairs shall be confined to the interior of a garage or other enclosed building, and shall not include any finish painting or clear coating operations.
- c. At outdoor locations, including any unenclosed structure such as a carport, only minor repairs are allowed. Only one vehicle per dwelling at an outdoor location can be under repair at any given time, and repairs must be completed within three days.
- d. Repairs are only allowed on vehicles that are registered to an occupant of the dwelling on the subject property.
- e. Repairs may not be conducted as a business or as part of a commercial operation of any kind.
- f. All waste oil and fluids shall be recycled or disposed of at an approved off-site location in compliance with local, state and federal environmental regulations. Auto parts and tires shall be recycled or disposed of in accordance with current LFUCG Division of Waste Management guidelines and in compliance with local, state and federal environmental regulations.

## ARTICLE 8: SCHEDULE OF ZONES

**8-1 AGRICULTURAL RURAL (A-R) ZONE****8-1(e) Prohibited Uses**

- 11. Major or minor automobile and truck repair, except as permitted by Article 3-8.

**8-2 AGRICULTURAL BUFFER (A-B) ZONE****8-2(e) Prohibited Uses**

- 11. Major or minor automobile and truck repair, except as permitted by Article 3-8.

**8-3 AGRICULTURAL NATURAL (A-N) ZONE****8-3(e) Prohibited Uses**

- 11. Major or minor automobile and truck repair, except as permitted by Article 3-8.

The Zoning Committee Recommended: **Approval**, for the reasons provided by staff.

The Staff Recommended: **Approval**, for the following reasons:

1. This is a timely amendment to the Zoning Ordinance that is needed in order to improve Zoning Enforcement efforts related to disturbances from vehicle repairs that are taking place in residential areas. By providing specific provisions relating to allowable non-commercial vehicle repairs, enforcement will be much more efficient, and staff will be able to respond appropriately to diverse situations.
2. The proposed amendment will establish, for the first time, specific criteria that clarify what type of vehicle repairs can be conducted for private purposes at residential properties. This will accommodate a reasonable need and, at the same time, allow enforcement to focus on more disturbing activities that often involve repairs of a business nature.

**Staff Presentation:** Mr. Marx presented the staff report, stating that the Zoning Enforcement section needed to establish criteria to regulate what types of vehicle repairs could be undertaken accessory to a residential use for private purposes. He said that, under the proposed text amendment, major auto repairs would be allowed only in the interior of a building. At outdoor locations, only one vehicle could be repaired at a time, and could be on site for only a limited duration of time. Mr. Marx stated that, in the staff's opinion, the most important element of this proposed text amendment would require that auto repairs could only be performed by the actual occupants of the residence.

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Mr. Marx stated that one of the Zoning Enforcement staff's biggest problems with the enforcement of vehicle repairs was proving that the operation was a business. He said that it was really difficult to document in such instances that money had changed hands. The proposed text would eliminate the need to prove whether the auto repairs were for business or private purposes.

Mr. Marx said that the Zoning Committee had recommended approval of this request.

Citizen Comment: There were no citizens present to comment on this request.

Action: A motion was made by Ms. Plumlee, seconded by Ms. Mundy, and carried 10-0 (Brewer absent) to approve ZOTA 2013-4, for the reasons provided by staff.

2. **ZOTA 2013-5: PARKING & STORAGE OF BUSINESS VEHICLES, TRAILERS, EQUIPMENT AND ASSOCIATED MATERIALS** – petition for a Zoning Ordinance text amendment to regulate the parking and storage of business vehicles, trailers, equipment and associated materials in residential zones.

INITIATED BY: Urban County Planning Commission

PROPOSED TEXT: Note: Underlined text below indicates an addition, while ~~text stricken through~~ indicates a deletion to the current Zoning Ordinance.

#### ARTICLE 1-11: Definitions

**STORAGE** - The keeping, either indoors or outdoors, of equipment, vehicles, materials or supplies used in the conduct of a trade, business, or profession. ~~Storage does not include the overnight parking in residential zones of a single vehicle with no more than two (2) axles weighing no more than three (3) tons which, although used primarily for business, trade or professional purposes, also provides daily transportation to and from work.~~

#### ARTICLE 3: GENERAL REGULATIONS

##### **3-9 Parking and Storage of Business Vehicles, Trailers, Equipment and Materials in Residential Zones**

- a. One business vehicle per dwelling is permitted, provided it has no more than two (2) axles and a GVWR (gross vehicle weight rating) of no greater than 14,000 lbs. and is used for daily transportation to and from work. Such a vehicle must be parked on a permitted paved surface or on a legal nonconforming (existed prior to December 5, 2002) gravel surface. Dump trucks, box trucks, cube vans, high-roof cargo vans (greater than 8' height, as measured from ground to top of roof), earth-moving machinery, tow trucks, transport wreckers, semi-trucks and tractor-trailers, concession trucks and vans, and flat bed trucks are specifically prohibited, even if they technically comply with the above limits.
- b. One single axle business trailer per dwelling (open or closed), used in conjunction with an allowed business vehicle, may be parked or stored on a permitted paved surface or legal nonconforming gravel surface. Any such trailer is limited to a length of no greater than twelve (12) feet. Concession trailers are specifically excluded from this category of allowable trailers, even if they technically comply with axle and length limitations.
- c. Trailers, equipment or materials shall not be parked or stored on any public or private street.
- d. Equipment can be stored on any open portion of a vehicle or open trailer only if such equipment is of a type customarily used by a homeowner for residential maintenance purposes (e.g., ladders, wheelbarrows, lawnmowers, weed eaters). Equipment of a type not customarily used by a homeowner for residential maintenance purposes (e.g., concrete mixers, bobcats) is prohibited.
- e. Construction materials (such as siding or brick) and salvaged items (such as used appliances or scrap metal) may not be stored.
- f. Business activities (e.g., selling of merchandise or customer visits) shall not take place on the premises, except as allowed by home office provisions or as authorized by a conditional use approved by the Board of Adjustment. Corollary business activities such as the storage of merchandise or having employees report to the property are also prohibited.

#### ARTICLE 8: SCHEDULE OF ZONES

##### **8-1 Agricultural Rural (A-R) Zone**

##### **8-1(e) Prohibited Uses in the A-R Zone**

13. Storage, except as permitted herein and by Article 3-9.

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The Zoning Committee **made no recommendation** on this request.

The Staff Recommended: **Approval**, for the following reasons:

1. This is a needed amendment to the Zoning Ordinance that will improve Zoning Enforcement efforts related to business activities that are taking place in residential areas. By providing specific provisions for allowable activities, enforcement will be much more efficient and will be able to respond appropriately to diverse situations.
2. The proposed amendment will allow a very limited range of business activities to take place in residential zones, at a scale and of a type that is not anticipated to be disturbing to surrounding properties.

Staff Presentation: Mr. Marx presented the staff report, and stated that, following the Zoning Committee meeting, there had been some concerns about limiting business trailers in residential areas to a single axle. He said that the staff verified that 12-foot trailers frequently have twin axles, so they were now proposing to delete the phrase "single axle." The text would then allow 12-foot trailers with two axles.

Mr. Marx stated that, at the Zoning Committee meeting, there was a great deal of concern about the proposal to restrict the contents of business trailers in residential zones. He said that the intent had been to limit the contents of trailers to items that could typically be seen on residential properties. The staff reviewed some past cases, and then determined that that provision of the proposed text would not be very beneficial, and could make enforcement more difficult.

Mr. Marx displayed the following photographs: 1) a trailer, less than 12 feet in length, with a water storage tank on the back. He said that, under the current provision, that trailer would not be allowed in a residential zone, because a large water tank was not an item that would customarily be found on a residential property. The staff determined that, in this instance, it would be more appropriate for the Ordinance to be less detailed about what types of materials would be allowed, rather than debating the merits of different types of materials. Mr. Marx stated that the staff would recommend deleting item "d" from the proposed text, as listed in the staff report and on the agenda, and re-lettering the remaining subsections.

Commission Questions: Mr. Cravens asked if the 12' length specified in the proposed text took into account the full length of the trailer with the tongue. Mr. Marx answered that manufacturers measure trailer length by the deck or bed length. To be consistent with the industry standards, the staff would not include the tongue length in the measurement.

Ms. Blanton stated that, at the Zoning Committee meeting, there had been some discussion about whether some trailer materials would be more unsightly than others. The consensus at that meeting was that it should not matter what type of material was being hauled on a trailer.

Mr. Penn stated that he was in agreement with the staff's recommendation to delete "single axle" from the proposed text, since most new 12-foot trailers were dual-axle. He said that he agreed with Ms. Blanton's comments, and he believed that the staff had addressed the Commission's concerns very well.

Mr. Cravens asked how this issue was handled in the past. Mr. Marx responded that, in the past, this issue was addressed dependent on how "storage" was defined. He said that a strict interpretation could vary from not allowing trailers at all, to adhering very closely to weight and item limits. Mr. Marx said that discussion had arisen in the past as to whether an attached trailer was included as part of the vehicle or not, so there was a need to clarify what types of trailers were allowable.

Commission Questions: Mr. Drake asked if the proposed text amendment would prohibit the overnight parking of the vehicles listed in a residential zone. Mr. Marx stated that that was correct. Mr. Drake asked if those vehicles were currently prohibited from parking overnight in residential areas. Mr. Marx answered that they were currently restricted based on the definition of "storage."

Citizen Comment: There were no citizens present to comment in this request.

Motion: A motion was made by Mr. Penn, and seconded by Ms. Mundy, to approve ZOTA 2013-5, for the reasons provided by staff, eliminating item "d."

Legal Comment: Ms. Jones stated that it was her understanding that the staff's proposal was to delete the language "single-axle" and replace it with "one business trailer."

Motion: Mr. Penn amended his motion to change "single-axle" to "business trailer," as recommended by staff.

Action: Mr. Penn's motion carried, 10-0 (Brewer absent)

### 3. **ZOTA 2013-6: TEMPORARY SIGNS** - petition for a Zoning Ordinance text amendment to amend to regulations for

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temporary signs in Article 17 of the Zoning Ordinance.

INITIATED BY: Urban County Planning Commission

PROPOSED TEXT: *(copies of proposed text available upon request)*

The Zoning Committee **made no recommendation** on this request.

The Staff Recommends: **Approval**, for the following reasons:

1. Temporary signs are a highly visible and common feature in Lexington-Fayette County's built environment. Enforceable regulations are needed to ensure that such signs do not proliferate to the point of being overly distracting to drivers and/or a detriment to the aesthetic quality of the streetscape.
2. The introduction of a permitting requirement for temporary signs will go a long way toward making enforcement efforts more efficient and productive. With specific time periods that a temporary sign can be displayed noted on a permit, needed monitoring by enforcement staff will be manageable and more likely to be a useful tool in gaining compliance.
3. A reduction in allowable time that temporary signs can be displayed is much more consistent with the overall concept of temporary signage. A recommended time limit of no more than eight weeks per year is considered reasonable, as that will provide sufficient time over the course of a year for the purpose of advertising special events or new products, or for providing other important information that may change from season to season.

Staff Presentation: Mr. Marx presented the staff report, explaining that permits are not currently required for such signs. Temporary signs can remain in place for 30 days, for up to 150 days over the course of a year, and they are intended to advertise a special event or change in operation of a business. The staff believes that 150 days a year is excessive for something that is intended to be temporary; so, they are recommending to significantly reduce that timeframe to two weeks at a time, for no more than eight weeks in a year.

Mr. Marx stated that there were some significant concerns at the Zoning Committee meeting about permitting for temporary signs. He said that the staff realized that some of the Planning Commission members might be unwilling to initiate a new permitting process, so they considered several alternatives, including: 1) requiring that anyone who wishes to erect a temporary sign provide notice to the Division of Planning; 2) issuing registration stickers to be placed on temporary signs to verify that they are allowable; and 3) abandoning the concept of temporary signage altogether, increasing the allowable sign square footage, and allowing business owners to decide how to use their signage. For various reasons, all of those options were determined to be unworkable, which led the staff to conclude that there is a need to require permits for temporary signs. Mr. Marx said that the staff also realized that the proposed new permitting process could create a burden for the Division of Building Inspection, so they are recommending that permits be issued on an annual basis, rather than for each two-week time slot.

Commission Questions: Ms. Blanton asked Mr. Marx to explain the process that would be involved in getting a temporary sign permit. Mr. Marx answered that there is currently no process, so the staff would have to work with the Division of Building Inspection to set up the process. He added that an applicant would be required to come to the office and fill out an application, and would likely have to pay a permit fee. The typical fee for permits issued by Building Inspection is \$25.

Ms. Mundy asked if the new permit requirement would include weekend signs for real estate open houses. Mr. Marx responded that, as long as the sign is less than three feet tall, does not interfere with driver visibility, and is only up from Friday evening to Sunday evening, it would not require a permit. He explained that, to date, such real estate signs have not typically been a problem with regard to enforcement complaints.

Mr. Penn asked if the temporary permit requirement would apply to political signs. Mr. Marx answered that, based on input from the Department of Law, the staff determined that political signs would be exempt from the permit requirement. Mr. Penn asked if any other signs would be exempt. Mr. King replied that real estate and construction signs would be exempt and would not require permits.

Mr. Cravens asked what types of signs would require temporary sign permits. Mr. Marx responded that most temporary signs are for businesses, including banners and window or wall signage. He added that most such signs are made of flexible, poster-like material.

Mr. Drake asked if banners on a business, such as for weekend sales, would be considered temporary signs; and whether such signs are permitted currently. Mr. Marx answered that, as long as a banner is attached to a window or wall, they are not currently prohibited. There are size limits, however, and the banner can only remain up for 30 days. Mr. Drake asked if the proposed text amendment would require a permit for banner signs, to which Mr. Marx replied affirmatively.

Commission Comment: Ms. Blanton stated that she appreciated all of the work the staff had put into drafting this text amendment, but she believed that it would create more work for the staff and would be onerous for business owners.

Motion: A motion was made by Ms. Blanton and seconded by Mr. Cravens to disapprove ZOTA 2013-6. The motion failed, 5-

5 (Brewer absent; Mundy, Owens, Penn, Plumlee, and Wilson opposed).

Director Comments: Mr. King suggested that the Commission refer this text amendment back for further discussion. He said that, since it is the Commission's amendment, it would be inappropriate to advance it to the Council with a disapproval recommendation.

Mr. King noted that there has been a significant cost incurred in attempting to enforce temporary signs. He added that "not knowing when the clock starts on any particular sign" when a complaint is received makes enforcement particularly difficult. Mr. King said that the staff would like to continue working with the Commission to develop a draft that would be acceptable to them.

Mr. Marx asked if the main concern was the new permitting process, or if it was the reduced time that a temporary sign could remain in place. Mr. Drake answered that he was concerned about the permitting process.

Ms. Blanton stated that she would be much more comfortable with adding a new permitting process if it could be completed online, so that business owners would not have to come to the office. Mr. Marx responded that the staff would take that into consideration.

Action: A motion was made by Mr. Penn, seconded by Ms. Blanton, and carried 10-0 (Brewer absent) to postpone ZOTA 2013-6.

4. **ZOTA 2013-7: ABATEMENT OF ZONING ORDINANCE VIOLATIONS** – petition for a Zoning Ordinance text amendment to provide clarification about the government's ability to abate a violation of the Zoning Ordinance.

INITIATED BY: Urban County Planning Commission

PROPOSED TEXT: Note: Underlined text below indicates an addition, while ~~text stricken through~~ indicates a deletion to the current Zoning Ordinance.

#### ARTICLE 5: ADMINISTRATION, ENFORCEMENT AND VIOLATIONS

**5-9(d) ABATEMENT** – When there is reason to believe that the violation poses a serious threat to the public health, safety or welfare; or in situations where damage resulting from continuation of the violation would be irreparable or irreversible; or if the violation represents a continuing public nuisance, the government may, without further notice, proceed to abate the conditions. In the case of a continuing public nuisance, abatement involving the removal of structures or materials shall only take place after a civil citation has been issued and has not been appealed to the Infrastructure Hearing Board, or after an appealed civil citation has been upheld by the Infrastructure Hearing Board. ~~In such cases,~~ The government may, in addition to any fine imposed herein, charge the responsible person, persons or entities with the cost of abatement, including equipment expense, disposal fee, if any, and an administrative fee of seventy-five dollars (\$75.00). The Urban County Government may file a lien for such abatement, in accordance with section 16-81 of the Code of Ordinances and KRS 65.8835. Citations, if issued, shall not preclude the government from abating the conditions and billing the responsible person, persons or entities for the cost of abatement.

The Zoning Committee **made no recommendation** on this request.

The Staff Recommends: **Approval**, for the following reasons:

1. Expanded abatement authority is needed in order for Zoning Enforcement efforts to be more responsive in situations involving a continuing public nuisance. Without such authority, the only option frequently available is to proceed with some type of court action, such as filing a criminal complaint with the Fayette County Attorney's office, which is not considered an appropriate action in many instances.
2. Adequate safeguards have been included in the proposed amendment to ensure that abatement only proceeds in situations where a violation has been documented and confirmed through the legal process. Given the appeal options available with the issuance of both Notices of Violation and Civil Citations, which represent enforcement steps taken before abatement would proceed, the rights of business operators and property owners will be fully preserved.

Staff Presentation: Mr. Marx presented the staff report, and stated that, under the current provisions of the Zoning Ordinance, the Zoning Enforcement section has the authority to pursue abatement action themselves, or by hiring a contractor; but that authority is limited to situations that threaten the public health, safety, or welfare, or create irreparable harm. He said that, under those standards, he was unaware of any such case within the past 12 years, so that provision is not helpful in resolving zoning violations. The staff is recommending the expansion of abatement authority to include continuing public nuisances.

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Mr. Marx stated that a question had arisen at the Zoning Committee meeting with regard to how zoning abatement fits into the enforcement process. He said that the Zoning Enforcement staff first investigates and documents complaints. If a zoning violation is found, a formal legal document called a Notice of Violation is issued to the property owner, identifying the specific provision of the Ordinance that is violated and providing the property owner with a time frame in which the violation can be remedied. If the violation is not remedied within that time frame, civil penalties are assessed, with fines ranging from \$75 for a first offense to \$300 for a fourth offense. Mr. Marx said if, at that point, the property owner chooses to allow the situation to continue, the staff has two means of recourse: either file a criminal complaint with the Fayette County Attorney's Office; or file an injunctive relief request with Circuit Court. The staff believes that, in many situations, the assessment of fines is not a stringent enough penalty, but taking the property owner to court is overkill.

Mr. Marx displayed a photograph of an ongoing signage violation, noting that it was the type of situation about which the staff often receives complaints. He said that the staff did not believe it would be appropriate to take the property owner in that situation to court. The proposed text amendment would give staff the authority to either remove the signs themselves, or hire a contractor to do so. Mr. Marx stated that the staff believed that the proposed text amendment would make the abatement process more timely and efficient. He displayed several more photographs of situations where abatement actions would be appropriate.

Commission Questions: Ms. Plumlee asked if the current fee scale increases incrementally. Mr. Marx answered affirmatively.

Mr. Cravens stated that he did not agree with the proposed text amendment. He asked if the threat of taking a property owner to court was typically effective. Mr. Marx answered that it worked in some cases. In a recent situation, LFUCG pursued the avenue of a trial with a six-person jury for a junkyard owner, wherein the judge had little knowledge of zoning issues. Mr. Cravens asked if there was a mediation process available. Mr. Marx responded that, in that case, the property owner did go through mediation, but it was not successful. Mr. Cravens said that he believed that it would be unsafe to expect Zoning Enforcement staff members to physically remove signage from a property.

Mr. Owens asked if the penalty amount increased with each successive violation for the same issue. Mr. Marx answered affirmatively. Mr. Owens suggested that the \$75 charge was not enough for the amount of effort expended by the staff in pursuit of these cases, and the staff should consider increasing the fine for a first penalty to \$150.

Citizen Comment: There were no citizens present to comment on this request.

Action: A motion was made by Mr. Wilson, seconded by Mr. Penn, and carried 8-2 (Brewer absent; Blanton and Cravens opposed) to approve ZOTA 2013-7, for the reasons provided by staff.

## V. COMMISSION ITEMS

- A. **REQUEST FOR INITIATION OF AN EXPANSION TO AN EXISTING H-1 OVERLAY ZONE** – The staff will request Planning Commission initiation of an expansion to the existing Western Suburb Historic District (H-1) Overlay zone for 611, 638 – 640 and 644 Ballard Street; 149 and 151 – 153 Jefferson Street; and the rear portion of 609 West Short Street.

Staff Comments: Ms. Wade stated that Bill Johnston, president of the Historic Western Suburb Neighborhood Association, had filed a request to add six parcels to the neighborhood's existing H-1 overlay area. Displaying a map of the area on the overhead projector, she said that the existing boundaries are somewhat irregular; the district extends from Newtown Pike, across Main Street, to West Short Street and Ballard Street. The properties proposed for addition to the H-1 overlay zone include three parcels with Ballard Street addresses; two parcels on Jefferson Street; and the rear portion of 609 West Short Street. Ms. Wade displayed photographs of each of the properties, noting that the front portion of 609 West Short Street is already included in the historic district.

Ms. Wade stated that Mr. Johnston was proposing to add the subject properties to the historic district in order to protect them. Mr. Johnston either owns several of the properties, or they are in a trust of which he is a member. He has invested heavily in preserving the properties, and would like to see them protected into the future.

Ms. Wade said that, per the Planning Commission's By-laws, survey postcards were mailed out to the four owners of the subject properties. All of the property owners responded, with 100% in support of the expansion of the H-1 boundary.

Ms. Wade stated that, at the Zoning Committee meeting, this request did not include the property at 609 West Short Street. Following that meeting, Mr. Johnston approached the property owners to determine if they would be agreeable to including that portion of the property in this request. The property owners were agreeable; in fact, they believed that that portion of their property was already part of the H-1 district.

Ms. Wade said that, if the Commission chooses to initiate this request, the Historic Preservation staff would begin their study and designation report to determine if these properties should be included in the historic district. That report would then be presented to the Board of Architectural Review, who would make a recommendation to the Planning Commission; the Commission would then make a recommendation to the Council.

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Ms. Wade noted that the staff had received a letter of support from the Blue Grass Trust for Historic Preservation.

Commission Questions: Mr. Drake asked if 159 Jefferson Street was the location of Nick Ryan's Steakhouse. Ms. Wade answered affirmatively. She added that the owners of the Stella's Deli property were approached about being added to this request as well; but they declined to do so at this time, as they hoped to complete some changes to their property that might not be approved by the BOAR.

Petitioner Presentation: Bill Johnston, 645 West Short Street, stated that, when he moved to the area approximately 25 years ago, Ballard Street was in need of repair. He said that the two houses on the corner were in terrible condition, and one had not been occupied for five years. He purchased those homes, restored them, and has maintained them over the years. Mr. Johnston added that, within the past few years, he purchased the house next door to Nick Ryan's and the property next door to it, where a house was so dilapidated that it had to be removed. Those lots were consolidated and sold to the owner of Nick Ryan's. Mr. Johnston stated that he had a great deal of energy and money invested in those houses, and he wanted to ensure that they were protected after he was no longer able to care for them.

Commission Questions: Ms. Blanton asked if the green house on Jefferson Street had been sold. Mr. Johnston replied that it was up for sale, and that he disclosed in the listing that the house was being added to the H-1 district.

Bettie Kerr, Director of Historic Preservation, stated that her Division was prepared to begin the designation study for the subject properties, should the Commission initiate this request.

Mr. Penn asked if a structure could be used as a restaurant or bar if it was included in a historic district. Ms. Kerr responded that land use is not affected by a historic overlay; it applies to design protection for exterior changes and site improvements only.

Action: A motion was made by Mr. Penn, seconded by Ms. Plumlee, and carried 10-0 (Brewer absent) to initiate the requested H-1 overlay expansion.

**B. PFR 2013-4: FAYETTE COUNTY PUBLIC SCHOOLS** – A Public Facility Review of Fayette County Public Schools' purchase of a property for use as their Early Childhood Program at 465 Springhill Drive.

**SUMMARY FINDINGS:** There are no Goals, Objectives or text of the *2007 Comprehensive Plan* in opposition to Fayette County Public Schools' acquisition and occupancy of the subject property for its Early Childhood Education Program; nor are there Themes, Goals or Objectives of the *2012 Comprehensive Plan* that provide any level or type of opposition to FCPSS' proposal. The Land Use Element of the Plan recommends that the property be used for Public Education purposes, recognizing its historic use as a child development center and indicating a desire for it to remain so, at least in some capacity. The text of the Comprehensive Plan, including both the Land Use Element and the Community Facilities chapter, supports the proposal, as do several Goals and Objectives.

**STAFF RECOMMENDATION:** **Approval**, as requested, with the following recommendation:

Even though Fayette County Public Schools is exempt from Zoning Ordinance requirements, it must still comply with State Building Code requirements. It is therefore recommended that any applicable reviews be conducted, and permits obtained from, the State of Kentucky's Division of Building Inspection or the Division of Facilities Management, as well as LFUCG's Division of Engineering, prior to commencing remodeling of the building or any possible future site improvements. This is critical, as there is a 100-year FEMA flood hazard area along the eastern/northeastern property line.

Staff Presentation: Ms. Rackers stated that this request was made by Fayette County Public Schools (FCPS) for their purchase of a property at 465 Springhill Drive. The subject property is located directly across from Lafayette High School, where all of the surrounding property is zoned for residential use.

Ms. Rackers stated that FCPS purchased the subject property in order to locate their early childhood education program there. She displayed several photographs of the subject property, noting the location of the building, parking, and play area. Ms. Rackers said that the subject property is approximately two acres in size, with an existing building. That existing structure is approximately 56,000 square feet in size, and is one story tall. FCPS is proposing only minor renovations to the building, with no major changes to the property.

Ms. Rackers said that the 2007 Comprehensive Plan recommends Public Education use for the subject property, which includes all facilities for the public school system. The subject property was formerly used as the Child Development Center of the Bluegrass, which was started in 1958 to offer services to children from age six weeks through kindergarten. It offers a pre-school program; speech, physical, and occupational therapy; and evaluation and assessment. The Fayette County Preschool Center will continue to offer the same services at this location. Ms. Rackers stated that the Center is proposing to have three classrooms, to serve approximately 96 children. Their program consists of three-year-olds with diagnosed special needs, and

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four-year-olds who qualify based on income and/or special needs. The Center operates two half-day preschool sessions, as well as therapy sessions as needed, screening and evaluation meetings, and various annual review meetings.

Ms. Rackers said that the Fayette County Preschool Center is proposing to have approximately 26 staff members on site, with educational specialists and an audiologist. The Center plans to collaborate with the Fayette County Head Start program to assess hearing disabilities in their students. In addition to the regular staff, Lafayette High School students will work on site as volunteers to help in the classrooms and answer phones.

With regard to the 2007 Comprehensive Plan, Ms. Rackers stated that there are several Goals & Objectives, as well as the text, that apply to this request. She said that Fayette County Public Schools has a stated goal of becoming a world-class school system by 2020; the Early Childhood Program is one aspect of that plan, as it can help prepare children to enter the school system.

Ms. Rackers stated that there is a large amount of FEMA floodplain on the subject property, with some areas of the property having historically suffered from flooding. No floodproofing or mitigation is needed for the existing building; however, the staff is requesting that FCPS consult with the Division of Engineering in the event that future changes are undertaken. Ms. Rackers stated that the staff finds this request to be in compliance with the 2007 Comprehensive Plan, based on the findings as listed in the agenda.

Action: A motion was made by Ms. Blanton, seconded by Ms. Plumlee, and carried 10-0 (Brewer absent) to approve PFR 2013-4, for the reasons provided by staff.

VI. **STAFF ITEMS** – No such items were presented.

VII. **AUDIENCE ITEMS** – No such items were presented.

VIII. **MEETING DATES FOR AUGUST, 2013**

Subdivision Committee, Wednesday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	August 1, 2013
Zoning Committee, Wednesday, 1:30 p.m., Planning Division Office (101 East Vine Street).....	August 1, 2013
<b>Subdivision Items Public Meeting</b> , Thursday, 1:30 p.m., 2 <sup>nd</sup> Floor Council Chambers.....	<b>August 8, 2013</b>
Work Session, Thursday, 1:30 p.m., 2 <sup>nd</sup> Floor Council Chambers.....	August 15, 2013
<b>Zoning Items Public Hearing</b> , Thursday, 1:30 p.m., 2 <sup>nd</sup> Floor Council Chambers.....	<b>August 22, 2013</b>
Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	August 28, 2013

IX. **ADJOURNMENT** – There being no further business, Chairman Owens declared the meeting adjourned at 4:42 p.m.

TLW/TM/CT/BJR/BS/src

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Mike Owens, Chair

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Carla Blanton, Secretary